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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAR 29 1993FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of Section 26)

Cable Television Consumer)

Protection and Competition Act of)
1992)Inquiry into Sports Programming)
Migration)

PP Docket No. 93-21

COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS

The National Association of Broadcasters ("NAB")^{1/} submits these
Comments in response to the Commission's Notice of Inquiry ("Notice") in the above-
referenced proceeding.

In mandating the study that is the subject of the Notice, the House
Energy and Commerce Committee observed that, "the migration of sports
programming away from free over-the-air television to pay television outlets has
become an increasingly important issue in recent years" and expressed "great concern"
about any developments that would result in a "significant reduction in the quality of
[sic] quantity of sports programming available on free television, whether professional
or collegiate."^{2/}

^{1/} NAB is a nonprofit, incorporated association which serves and represents America's radio
and television broadcast stations and networks.

^{2/} H.R. REP. No. 628, 102d Cong., 2d Sess. 125 (1992) ("H.R. Rep. No. 628").

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NAB shares this "great concern" over the migration of sporting events from free over-the-air broadcasting to pay services, particularly to the extent that it results from preclusive contracts between sports leagues or conferences and cable programming services which prevent local broadcasting outlets from providing their traditional coverage of local teams.

The Commission is well aware of examples of the disturbing trend in the movement of local sports events from free over-the-air television to cable services, a number of which were summarized in the following excerpt from a letter jointly authored by Congressmen Sikorski, McMillen and Shays:

In pro basketball, only community pressure saved seven Philadelphia "76'ers" regular season games for over-the-air broadcast. A cable sports channel, PRISM will provide consumers, for a fee, 73 regular season games. In professional hockey, residents of the Twin Cities could see their hometown North Stars play-off games only on pay-per-view.

College football is another example of these emerging trends. The University of Tennessee, for example, now provides its home games only on pay-per-view -- a \$24.95 ticket. On the West Coast, some PAC 10 games which were once available on free, over-the-air stations are now on the pay cable service "Prime Ticket". In baseball, where over 100 of the New York Yankee's games once were available on WPIX-TV, in recent years most Yankee games have migrated to a pay cable service.^{3/}

Additional examples are included in the legislative history to the 1992

Cable Act, which reference contracts between cable programming services and college

^{3/} Letter from Congressmen Gerry Sikorski, C. Thomas McMillen and Christopher Shays to Ned Crabb, Wall Street Journal, September 13, 1991.

football conferences which "have prevented the broadcast of college football games in California, Washington, Iowa and Arizona."^{4/}

The adverse public policy consequences of this disturbing trend in sports migration from free over-the-air broadcasting to cable were succinctly articulated by Congressman Peter Kostmayer in introducing his "Fairness To Fans Act of 1991":^{5/}

The average fan, whose area may not be wired for cable or who may not have the extra income to afford premium channels, is losing his ability to follow the hometown team on television. And to add insult to injury, many of these same fans are the local taxpayers who are subsidizing glittering new stadiums that serve as the homes for local professional franchises.^{6/}

In addition to the obvious harm to the viewing public, the loss by a local broadcaster of local sports programming to a pay service can have a severe adverse economic impact on what may already be the precarious financial condition of the local station. The following describes some of the ways in which stations come to rely on local sports programming:

At the local level, broadcasters seek sports programming as a means to establish or enhance local identity; as a potential source of strong ratings particularly for independents; as an excellent vehicle for promoting other station programming; and as a element in developing advertising packages . . .

^{4/} H.R. REP. NO. 628, supra at p. 126.

For example, a recently launched independent [station] may be willing to bid for key sports rights as a "loss leader" in order to establish an identity in the marketplace and create a vehicle for promoting other station programming. This programming might also be helpful in obtaining carriage on local and distant cable systems. Similarly, an established independent may bid aggressively for rights in order to protect its identity as the market "sports station."^{7/}

The adverse economic consequences for a station that has made a substantial investment in obtaining the rights to carry the games of local teams, were they then to be lost to a cable sports network, could be considerable. The station's investment in promoting the games, promoting and developing related programs such as coaches shows, developing sports related advertising packages and demographics, cable carriage, indeed its very identity, could evaporate. Moreover, if the station

threat is that the local station will be outbid by a cable sports network.^{8/}

The problem of sports siphoning is clearly a growing one which threatens the American people's ability to continue to see sporting events they expect on free television, and poses an increasing danger to the viability of the American system of free over-the-air television. Perhaps the greatest threat is posed by technological advances that will dramatically increase cable channel capacity which, in turn, could escalate the potential for pay-per-view. It has been estimated, for example, that making the Super Bowl a pay-per-view event could generate revenues of between \$250 million and \$600 million.^{9/} The temptation posed by such staggering sums may be overwhelming for those who would stand to benefit, notwithstanding the considerable political and popular opposition they would face.

Solutions to the sports siphoning problem will not come easily. Admittedly they involve complex economic, contractual, public policy, and even constitutional issues in which the rights and interests of sports teams, leagues, and players, schools, networks, cable operators, broadcast stations and, above all, sports fans must be balanced. The essential first step in resolving these issues is the comprehensive study which the Notice in this proceeding is designed to elicit. NAB

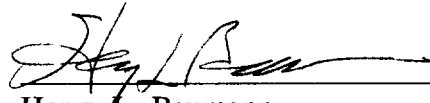
^{8/} The extent to which the advent of retransmission consent will ameliorate the imbalance between local broadcasters and cable sports networks in their ability to bid for sports rights remains to be determined. Even under the 1992 Cable Act, cable sports networks may continue to be able to pass higher amounts bid for sports rights on to subscribers, either by placing the networks on an expanded basic tier subject to less rigorous rate regulation, or by utilizing the provisions of the Act which require the Commission to consider the direct costs to a cable operator of obtaining signals carried on the basic tier. See 47 USC § 543(b)(2)(C)(ii).

^{9/} Los Angeles Times/Calendar, June 25, 1989 at 86.

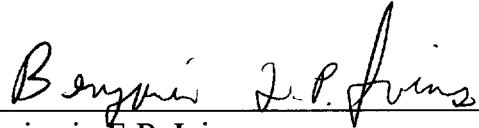
looks forward to reviewing the results of this study, and to providing recommendations that will assure continued free access to sporting events for all Americans.

Respectfully submitted,

NATIONAL ASSOCIATION OF
BROADCASTERS
1771 N Street, N.W.
Washington, D.C. 20036



Henry L. Baumann
Executive Vice President and
General Counsel



Benjamin F.P. Ivins
Assistant General Counsel

Mark R. Fratrik, Ph.D.
Vice President/Economist
NAB Research & Planning

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